

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

BOISEY NEAL,

a.k.a BOISY NEAL,

Defendant.

Case Numbers:

207255049

207255050

207255051

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(Motion's Hearing)

Baltimore, Maryland

Friday, December 20, 2019

BEFORE:

HONORABLE W. MICHEL PIERSON, Associate Judge

APPEARANCES:

For the State:

ALEXANDER ROTHSTEIN, ESQUIRE  
standing in for MICHAEL LEEDY, ESQUIRE

For the Defendant:

GREGORY FISCHER, ESQUIRE

\* Proceedings Digitally Recorded \*

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P R O C E E D I N G S

(9:47 a.m.)

THE CLERK: All rise. Circuit Court for  
Baltimore City, Part 3, now begins its morning session.  
The Honorable Michel Pierson presiding.

THE COURT: Good morning. Be seated, please.  
Can I have those?

THE CLERK: The whole thing, Your Honor?

THE COURT: The whole thing.

All right. Good morning, everyone.

MR. ROTHSTEIN: Good morning, Your Honor. May  
I call the case?

THE COURT: Yes.

MR. ROTHSTEIN: May it please the Court.  
Calling State of Maryland versus Boisey Neal, Case Number  
207255049 through 051. There also seems to be a habeas  
petition under 24-H-19-000086. Alexander Rothstein on  
behalf of the State, standing in for Assistant State's  
Attorney Michael Leedy.

MR. FISCHER: And good morning, Your Honor.  
Greg Fischer with the Office of the Public Defender, here  
on behalf of Boisey Neal, who is present and standing to  
me left.

I would note that back in 2014, Mr. Neal  
legally had his name changed. His name is now Boisy

1 Oshi, last name spelled O-s-h-i.

2 THE COURT: O-s-h-i?

3 MR. FISCHER: Yes, Your Honor.

4 THE COURT: Thank you.

5 MR. FISCHER: Thank you.

6 THE COURT: Good morning.

7 MR. FISCHER: Good morning.

8 THE COURT: And thank you for appearing, Mr.  
9 Fischer.

10 MR. FISCHER: No problem, Your Honor.

11 THE COURT: I scheduled this hearing, but let  
12 me -- you all may be seated.

13 This case -- in the habeas case, the habeas

14 corpus petition was assigned to me. And I, if I recall  
15 correctly, and I'm not reciting every item in the  
16 history, issued a show cause order. And in response to  
17 that, the State filed State's response to petition to  
18 writ of habeas corpus and motion to correct illegal  
19 sentences, which was -- bears both the habeas case number  
20 and the criminal case number. And Mr. Oshi filed a  
21 response to that.

22 ~~And the State's position is that the -- it is~~  
23 ~~correct, that the sentences imposed in this case, by which~~  
24 ~~I mean the criminal case, are illegal because they~~  
25 ~~violate the plea agreement.~~

1 And my view -- and I'm really just prefacing  
2 this so anyone can argue anything that he wants to -- is  
3 that habeas corpus does not lie here because habeas  
4 corpus requires with certain minor exceptions, none of  
5 which apply here. To grant the writ of habeas corpus,  
6 the court must conclude that the petition is entitled to  
7 immediate release, and that would not be the case.

8 Therefore, it seemed to me that the appropriate  
9 action would be to set this for a hearing on everything  
10 in front of one judge. And since I had initiated this  
11 really, or so to speak, that it made sense to set  
12 everything in front of me so that we could dispose of  
13 everything at one time.

14 And I note that -- I just note in passing that  
15 I think Mr. Oshi has filed another petition for post  
16 conviction relief. And I say this, I'm just saying  
17 parenthetically, I think he's still filing these under  
18 the name of Neal, but we would have to attend later to  
19 what the name change would mean.

20 But in any event, continuing with what I'm  
21 saying, it seemed to me, and I may be wrong about this,

22 ~~that if the court strikes the current sentences as~~  
23 ~~illegal, it would be necessary to impose a new sentence,~~

24 and it seemed to me it was essential that Mr. Oshi have  
25 counsel for that, which is why I asked Mr. Fischer to

1 stand in, and he readily agreed to do so because he's a  
2 very able attorney. And so I thank him -- that's why I'm  
3 thanking him for being here.

4 So with that preface, I think that's where we  
5 are procedurally, but I'll be happy to hear anything  
6 anybody wants to say.

7 MR. ROTHSTEIN: I am unaware of any post  
8 conviction being filed. That's not something that's  
9 contained in the --

10 THE COURT: Well, maybe I'm wrong. I know  
11 there were several post convictions filed, and some of  
12 them were withdrawn without prejudice, and I may have  
13 seen this -- I may have actually seen that by looking on

14 the mainframe yesterday, so I could be wrong. I just  
15 thought that was the case.

16 MR. ROTHSTEIN: And the other thing I would say  
17 is, you know, Mr. Leedy had responded to the writ of --  
18 to the habeas petition, essentially stating that when  
19 it's pro se, that the substance of the filing would  
20 govern what the petitioner is asking for more so than the  
21 caption of the filing. And so Mr. Leedy responded as  
22 though while it's a habeas petition, he responded as  
23 though it was a motion to correct an illegal sentence,  
24 which can be corrected at any time.

25 So if the Court was inclined --

1 THE COURT: Well, I -- is that -- okay. I  
2 don't think that's the case procedurally. I think Mr.  
3 Leedy moved to correct the illegal sentence. He didn't  
4 suggest that Mr. Neal or Mr. Oshi's petition should be  
5 treated as a motion to correct illegal sentence. He  
6 actually moved to correct the illegal sentence, which I  
7 think he could do.

8 The State can correct -- I mean, the court can  
9 correct an illegal sentence on its own initiative, so it  
10 doesn't really matter who moves to correct an illegal  
11 sentence; it's still within the court's power to correct  
12 it.

13 MR. ROTHSTEIN: ~~Yeah, and I mean and that's~~

14 ~~why. If the Court was inclined to correct the illegal~~  
15 ~~sentence today, there would be no objection~~ from the  
16 ~~State.~~

17 THE COURT: Okay. All right.

18 MR. FISCHER: And, Your Honor, most  
19 respectfully, the defense is in agreement that the intent  
20 of the parties was to have the 10-year sentence run  
21 consecutive to the 15-year sentence in Anne Arundel  
22 County. Therefore, the aggregate sentence should be 25  
23 years, rather than the aggregate of 27 years that he's  
24 presently serving. ~~So the defense is in agreement that~~  
25 the sentence is illegal and that it should be ~~reimposed~~

1 so that it's running consecutive only to the 15-year  
2 sentence in Anne Arundel County and not to any  
3 outstanding sentence.

4 So that effectively should move up his release  
5 date by two years. I'm not sure exactly how DOC is going  
6 to calculate this. But I think on the commitment record,  
7 it should be clear that now the aggregate sentence is 25  
8 as opposed to 27. That way DOC realizes that the release  
9 date should move up by two years.

10 THE COURT: Right -- I'm sorry. I didn't mean  
11 to interrupt.

12 MR. FISCHER: I would also add, Your Honor, if  
13 the Court grants the motion to correct the illegal

14 sentence, obviously Mr. Oshi would then have the right to  
15 file a motion to modify under Rule 4-345 upon imposition  
16 of the new sentence. And it's the defense intention to  
17 do that.

18 And I would just point out that he's been doing  
19 -- based on the information I have so far, he's been  
20 doing very well in the Division of Corrections. He is  
21 the lead facilitator for Alternatives to Violence. He  
22 has numerous certificates showing that he has  
23 satisfactorily completed a facilitator's workshop on non-  
24 violent conflict resolution. He also has a certificate  
25 showing that he's achieved the essential skills as a

1 groundskeeping and landscaping worker. He received an  
2 evaluation last year where he receives mostly excellent  
3 in all areas. So he's been doing very well.

4 So I would ask the Court if the Court does  
5 grant the motion to correct illegal sentence, to consider  
6 holding a motion to modify sub curia under Rule 4-345 and  
7 consider modifying Mr. Oshi's sentence further down the  
8 road.

9 THE COURT: Well, that raises a procedural  
10 issue, I guess, or really I would call it more a  
11 strategic decision for Mr. Oshi to make. So this was  
12 Judge Doory's case. And apart from the fact that I  
13 thought it might make more sense to do everything --

14 handle everything procedurally at the same time, Judge  
15 Doory's replacement was not appointed until very  
16 recently. It's now Judge Anthony Vittoria, and I will be  
17 gone in two weeks.

18 So would you prefer -- and you can consult with  
19 Mr. Oshi about this. Would you prefer that rather than  
20 granting the motion to correct illegal sentence today,  
21 that I reset that motion before Judge Vittoria, or would  
22 you prefer that I grant the motion for illegal sentence  
23 today and, I guess, note for the record that motion to  
24 modify will be filed, and there will be a request to hold  
25 it sub curia? I just -- what is the best way in your

1 view, and put this to you because the strategic decision  
2 should be made by you, not by me.

3 MR. FISCHER: Yes, Your Honor.

4 THE COURT: How do you want me to do this so  
5 that Judge Vittoria will be informed about what happened  
6 here today and why?

7 MR. FISCHER: Yes, Your Honor. If the Court  
8 does grant the motion to correct illegal sentence, would  
9 Your Honor be willing to -- I realize Your Honor will not  
10 be the judge who would hear the motion to modify down the  
11 road, but -- so I see what Your Honor is saying. You  
12 cannot commit another judge down the road to hold --

13 THE COURT: I can't -- right. I can't commit  
14 him to do it; right.

15 MR. FISCHER: -- to hold the motion sub curia.

16 THE COURT: Right. Right. No.

17 MR. FISCHER: But the other judge would be able  
18 to do that.

19 THE COURT: And I'm certainly -- I make no  
20 bones about this. I certainly would inform Judge  
21 Vittoria of what happened here, and I would inform him of  
22 your intention to do that. And I'll give him the  
23 background and, you know, make sure that he has -- that  
24 he is aware of the record of what transpired today, so I  
25 don't think anything will be lost in translation. But I

1 just wanted to -- so we're all clear about what we're  
2 doing here, I wanted to put that on the record.

3 MR. FISCHER: Yes, Your Honor. If I may  
4 consult with Mr. Oshi?

5 THE COURT: Sure.

6 (Brief pause.)

7 MR. FISCHER: I've discussed the matter with  
8 Mr. Oshi. Mr. Oshi prefers to proceed today, and he  
9 wanted me to bring to the Court's attention that he filed  
10 -- he asserts that he filed a motion himself to correct  
11 illegal sentence on the same grounds earlier, and that  
12 was denied.

13 THE COURT: Oh, yes. I'm well aware that he's  
14 filed several motions to correct illegal sentences have  
15 been denied.

16 MR. FISCHER: Yes, Your Honor.

17 THE COURT: Yes, I'm well aware of that fact  
18 yes.

19 And I should say I have -- I really was, I  
20 suppose, truncating everything. But, no, there's quite a  
21 history of proceedings and motions in this case, all of  
22 which I'm aware of. And I know that he's filed several  
23 motions to correct illegal sentence that have been  
24 denied, as well as I know he's sought other forms of  
25 relief. So, yes, I am aware of that.

1 But one way or another, and let's just make  
2 this clear for the record. The reason the sentence is  
3 illegal is because the plea agreement was that the  
4 sentences in this case would be consecutive to the Anne  
5 Arundel County case. And I'm not sure at the time of  
6 sentencing anyone was aware or thinking of the Baltimore  
7 County case, but the formulation of Judge Doory's  
8 sentence by saying that it was consecutive to all  
9 sentences had the effect of inadvertently, I think,  
10 including the Baltimore County sentence and the sentences  
11 to which these sentences would be consecutive. And I  
12 think you've covered that as well, Mr. Fischer. So I  
13 think we should correct those as long as we're here.

14 All right. Then I am going to grant the motion  
15 to correct illegal sentence

16 And that being the case, it is in order to  
17 impose sentence, and the sentence I intend to impose is  
18 the agreed sentence from the plea agreement in the  
19 original proceedings in this case. And that is going to  
20 be, just so we're all clear, three concurrent 10-year  
21 terms, along with a concurrent term of 5 years without  
22 the possibility of parole on the handgun charge. And all  
23 of those will be consecutive to the sentence that's  
24 imposed in Case 24 -- I'm sorry -- Case 02-K-07-001393 in  
25 the Circuit Court for Anne Arundel County. So that's the

1 sentence I intend to impose.

2 Is there anything that Mr. Oshi wishes to say  
3 prior to the imposition of sentence?

4 MR. FISCHER: If I may advise him, Your Honor?

5 THE COURT: Yes.

6 MR. FISCHER: Mr. Oshi, as you are aware, the  
7 Court is resentencing you. You are going to receive all  
8 credit for time that you're entitled to by law. And  
9 effectively, this should move your release date up two  
10 years.

11 But because a new sentence is being imposed,  
12 you have the right to address the Court before the Court  
13 imposes a sentence. Is there anything you would like to

14 say to the Court before the Court imposes a sentence?

15 THE DEFENDANT: Yes, sir.

16 First of all, I'd like to thank you for finally  
17 getting me in here. It's been a long road, 10 years, 9  
18 months. I've written 63 letters to Judge Doory. No  
19 response. I filed multiple motions. You have them, and  
20 all of them were denied. Same stuff that I had. I'm not  
21 a lawyer. But there's a lot of things I can't make, but  
22 I can make sense. And I knew that there was something  
23 wrong because I signed a plea agreement prior to this,  
24 and it's in my transcript for a 20-year concurrent  
25 sentence. That didn't happen.

1 So it's been 10 years and 9 months, I just  
2 wanted to know was I doing dead time that whole time, 10  
3 years and 9 months that I was trying to get back in here  
4 and correct it within the first few months. I tried to  
5 contact Ms. Nicole Love Kelly the Monday after I was  
6 sentenced to say there's something wrong with the  
7 sentence.

8 They took me up for parole, Your Honor, gave me  
9 a three year hit on the illegal sentence. I told them  
10 not to take me up by the DOC policy, Chapter 30-190 of  
11 the policy. I asked case management, I said could you  
12 all contact the court and then take me up for parole  
13 after my sentence is corrected. They gave me a three-

14 year hit on the illegal sentence. And I was told I was  
15 doing dead time.

16 And from what I've read, according to Criminal  
17 Procedure 6-218, credit against sentencing, using (c) and  
18 (d), this sentence today that I'm getting ready to  
19 receive is actually starting the process all over again.  
20 It's like I've never been sentenced before. So I want to  
21 know about the credit -- the time I'm doing trying to get  
22 in here because it wasn't my fault. I tried to get in  
23 this courtroom. Did I do dead time for 10 years and 8  
24 months -- 9 months? That was my question.

25 THE COURT: Well, it's -- the credit issue as I

1 see it is we go back to -- I mean the effective date of  
2 the sentence is going to be the same as the effective  
3 date of the original sentence. Now the credit you would  
4 receive would be the same credit that you should have  
5 received based upon the original date of sentencing. But  
6 because it's a consecutive sentence -- and are you --  
7 have you now completed the Anne Arundel County sentence?

8 THE DEFENDANT: Yes, it's done

9 THE COURT: Okay. So I'm assuming all of this  
10 is going to result in a recalculation of your entitlement  
11 to release at this point in time.

12 THE DEFENDANT: Yes. I have 13 years and 6  
13 months in on 15.

14 THE COURT: Well, I mean I guess the other  
15 thing I will do if you want is I will communicate with  
16 the Parole Commission just to make sure that -- although  
17 I would assume that this information -- I'm going to hear  
18 from you in just a moment, Mr. Roth -- no, no. I'm  
19 assuming this will flow through anyway, but go ahead.

20 MR. ROTHSTEIN: No. I just think that if he  
21 was doing a 15-year sentence in Anne Arundel County and  
22 then a 10 year-sentence -- well, this was contemplated as  
23 a 10-year sentence, I don't think he -- it doesn't sound  
24 like he's been doing any, as he calls it, dead time

25 THE COURT: No, I don't think he has, but I

1 still --

2 MR. ROTHSTEIN: I just wanted to put that  
3 concern --

4 THE DEFENDANT: I was just told that, Sir.

5 MR. ROTHSTEIN: No, I understand.

6 THE DEFENDANT: I was told I wasn't going to  
7 receive --

8 THE COURT: No. No cross-talk. No cross-talk.

9 MR. ROTHSTEIN: Yes. It doesn't sound like  
10 there's any dead time here, given the numbers.

11 THE COURT: Okay.

12 MR. FISCHER: And, Your Honor, actually as a  
13 result of the reimposition of the sentence, he should be  
14 eligible for parole now.

15 THE COURT: That's what I'm thinking.

16 MR. FISCHER: Right. Because with a 25-year  
17 sentence, which I believe the Anne Arundel County  
18 sentence started June 2007, 12 and a half years would be  
19 December 2019.

20 THE COURT: Right. So, yeah, so I do think it  
21 is warranted for the -- and I will. As I say, I will  
22 communicate to the Parole Commission just to make sure  
23 they're aware of this.

24 MR. FISCHER: Yes, Your Honor. Thank you.

25 THE COURT: All right.

1 MR. FISCHER: I think it may be helpful again  
2 for the commitment to make it clear that the aggregate  
3 sentence would now be 25 years. Because I believe DOC  
4 now has the aggregate sentence as 27 years.

5 (Brief pause.)

6 THE COURT: I'm not sure I see where that goes  
7 on the commitment.

8 THE DEFENDANT: It's not on the commitment.

9 THE COURT: But we'll make sure that they're  
10 aware of that.

11 MR. FISCHER: Okay. But the commitment would  
12 say then that the -- it would specifically specify the  
13 case number for Anne Arundel county.

14 THE COURT: Yes, right. And the original one  
15 said, "Consecutive to the last sentence to expire of all  
16 outstanding and unserved Maryland sentences." The new  
17 commitment I'll go over this with the clerk. The new  
18 commitment is going to say, "Consecutive to the sentence  
19 imposed in Case Number 02-K-07-1393, so that will fix  
20 that."

21 MR. FISCHER: Yes, Your Honor.

22 THE COURT: All right. Now the last thing I  
23 have to say, all these papers have to be made out in the  
24 name of Boisy Neal, and I'm not sure -- I'm happy to  
25 address Mr. Oshi as Mr. Oshi in proceedings, but I think

1 -- I don't want to throw another complication in by --

2 THE DEFENDANT: Understand, Your Honor. I  
3 understand, Your Honor.

4 THE COURT: Okay. All right. Well, for all of  
5 those reasons, the sentence that imposed in these cases  
6 is -- I just want to make sure I get the counts right.  
7 In case 207255049, robbery with deadly weapon, and that's  
8 Count 1; 207255050, robbery with deadly weapon, that's  
9 Count 1; 207255051, Count 1, robbery with deadly weapon,  
10 10 years in each case concurrent. And in Case 207255050,  
11 Count 7, use of a handgun in the commission of a crime of  
12 a violence, the sentence is 5 years without possibility  
13 of parole, again, concurrent to all of the other

14 sentences. All of these sentences will be consecutive to  
15 the sentence in Case 02-K-07-001393, Circuit Court for  
16 Anne Arundel County. That will be the Court's sentence.

17 And I don't think I need to repeat the advice  
18 about the gun offender registration.

19 And, well, why don't you advise him of his  
20 post-trial rights now, post-sentencing rights.

21 MR. FISCHER: Yes, Your Honor. And could  
22 the -- and this may not be necessary, but just could the  
23 commitment also state that the sentence is to run  
24 concurrent with any other outstanding sentence. So  
25 consecutive to the Anne Arundel County case, but

1 concurrent with any other outstanding sentence.

2 Obviously, it's automatically concurrent by law.

3 THE COURT: It's automatically concurrent by

4 law.

5 MR. FISCHER: Okay. I just want to make sure  
6 there's no confusion on DOC's part.

7 THE DEFENDANT: When does my credit start, Your

8 Honor?

9 THE COURT: Are there other sentences?

10 MR. FISCHER: Well, the only other sentence  
11 would be the 2 year consecutive sentence to the --

12 THE COURT: Ah, ah. No, it's concurrent by

13 operation of law.

14 THE DEFENDANT: Thank you.

15 THE COURT: Sentence -- I'm sorry. The  
16 sentence would date to, I believe, October 5, 2006, which  
17 is the date of the offense.

18 THE DEFENDANT: Yes.

19 MR. FISCHER: If I may advise Mr. Neal?

20 THE COURT: Yes.

21 MR. FISCHER: Mr. Neal, you have certain post-  
22 sentencing rights.

23 You have 30 days to file application for leave  
24 to appeal to the Court of Special Appeals.

25 You have 90 days to file a motion to reduce or

1 modify your sentence. If such a motion were filed, the  
2 court could not increase your sentence. The court could  
3 either keep your sentence the same or reduce your  
4 sentence following the hearing with the consent of the  
5 State's Attorney's Office.

6 You also have 30 days to file an application to  
7 have your sentence reviewed by a three-judge panel. If  
8 you file such an application, His Honor Judge Pierson  
9 would not be a member of that panel. However, the three-  
10 judge panel could consult with His Honor and ask His  
11 Honor why this sentence was imposed in this particular  
12 case.

13 If you filed an application for review of  
14 sentence by a three-judge panel, the three-judge panel  
15 could either keep your sentence the same or under some  
16 circumstances reduce your sentence. Or under some  
17 circumstances, even increase your sentence up to the  
18 statutory maximum.

19 I will file a motion to modify your sentence on  
20 your behalf, and it will ask the court to hold that sub  
21 curia.

22 Do you understand the post-trial right?

23 THE DEFENDANT: Yes. Yes. Yes.

24 THE COURT: All right. So let me say three  
25 other things then. Number one, I will communicate with

1 the Parole Commission just to make sure this information  
2 is noted. Number two, I will communicate with Judge  
3 Vittoria about what happened here today and the fact that  
4 a motion for a modification will be filed. And, number  
5 three, I will be issuing a written order denying the writ  
6 for habeas corpus.

7 And I guess number four, Mr. Rothstein, I think  
8 you're going to have to initiate a guidelines worksheet.

9 MR. ROTHSTEIN: I can do that.

10 THE COURT: All right. So I think that  
11 concludes the proceedings. Again, Mr. Fischer, I  
12 appreciate your stepping in and bringing your usual able  
13 talents to bear upon this.

---

14 MR. FISCHER: Thank you so much, Your Honor.  
15 My client just had an inquiry. My client indicates he  
16 does not wish to proceed on his pro se post conviction.

17 THE COURT: So there is one?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Then I'm going to issue an  
20 order noting that that's been withdrawn.

21 THE DEFENDANT: Thank you.

22 THE COURT: All right. Thank you.

23 MR. FISCHER: And, Your Honor, may the State  
24 and I approach on an unrelated matter?

25 THE COURT: Yes, yes.

1 (Whereupon, the matter was concluded at  
2 10:16 a.m.)  
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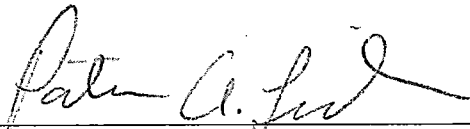
REPORTER'S CERTIFICATE

I, Patricia A. Trikeriotis, Chief Court Reporter of the Circuit Court for Baltimore City, do hereby certify that the proceedings in the matter of State of Maryland vs. Boisey Neal, a.k.a Boisy Neal, Case Numbers 207255049, 50, 51, on December 20, 2019, before the Honorable W. Michel Pierson, Associate Judge, were duly recorded by means of digital recording.

I further certify that the page numbers 1 through 24 constitute the official transcript of these proceedings as transcribed by me or under my direction from the digital recording to the within typewritten matter in a complete and accurate manner.

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In Witness Whereof, I have affixed my signature  
this 5th day of March, 2021.



Patricia A. Trikeriotis  
Chief Court Reporter